



ACN 628 088 371 / ACNC Registered

28 December 2022

Ms Nerida O'Loughlin
Chair
Australian Communications and Media Authority

Dear Ms O'Loughlin,

ABC Alumni is an organisation of some two hundred former ABC staff and contractors who believe passionately in the need for a fearless and independent national broadcaster as a vital part of Australian democracy. Among our members are people with experience of leading the ABC's journalism in very senior positions for many years.

We are not, however, associated with the ABC and no ABC executive has played any part in composing, or had forewarning of, the contents of this email.

ABC Alumni has hitherto respected the role of the ACMA as the final arbiter of complaints against free-to-air broadcasters in Australia. However, it believes that the ACMA's investigation of the complaint against the two *Four Corners*' programs entitled 'Fox and the Big Lie' has seriously damaged any claim that it is a body whose opinion as to what is or what is not good journalism is worth anything; and furthermore, has needlessly damaged the reputation of Australia's most important television current affairs program.

We note that although the ACMA rejected the vast majority of the complainants' claims, its [media release dated 21 December](#) emphasised that it had found three alleged breaches of the ABC's Code of Practice. You personally, Ms O'Loughlin, were quoted in the release pontificating about the ABC's omissions and journalistic sins.

And yet that press release, and the investigation report to which it refers, are in our view 'materially misleading' in far more serious ways than the *Four Corners* reports, because they either omit or distort the information they convey to the reader.

Example 1: The failure to name the complainant.

It may be a part of the ACMA's *modus operandi* that it does not name complainants. In some circumstances that may be justifiable. In this instance, it is absurd. The complainant was Fox News, or the Fox Corporation, the owner of the news organisation about which the ABC was reporting. To omit that simple fact is, quite simply, materially to mislead the Australian public, since that knowledge would materially affect any judgment about the likely validity of the complaint.

Example 2: The claim that the ABC breached its Code of Practice in omitting reference to a Fox News statement.

The ACMA's media release states:

In one case, the ABC reported the appearance of two Fox presenters at a 2018 Trump rally without disclosing that Fox had issued a public statement censuring the two presenters.

That sentence is simply not correct. Fox News issued a public statement that did not censure, or even name, the two presenters. It said, in its entirety: 'Fox News does not condone any talent participating in campaign events. We have an extraordinary team of journalists helming our coverage tonight and we are extremely proud of their work. This was an unfortunate distraction and has been addressed.'

It is the complainant who characterises this obvious piece of whitewashing as 'censuring' the presenters. The ACMA has blandly and uncritically accepted the complainants' description. There is no indication in the statement whatsoever of 'censure'. There is no indication of what action, if any, was taken against the presenters. When *Four Corners* asked for confirmation of censure, and information about what actions had been taken, it received no reply. To any reasonable journalist, that omission by Fox simply confirms that their statement was for the purpose of damage limitation, and nothing more. If an action has no consequence, it has been condoned, whatever a three-year-old media release may say.

In our opinion, the ACMA's description of Fox News's statement in its media release is materially misleading, and its judgment that the ABC was in breach of its own Code of Practice by omitting reference to it is absurd.

Example 3: The claim that the ABC breached its Code of Practice by not analysing the impact of social media.

The ACMA's media release states:

In a further omission of relevant facts, the ABC also failed to report on the role social media played in inciting the Capitol Hill riots.

Relevant to what? The program was not about the manifold causes of the January 6th riot on Capitol Hill. It was about the role Fox News played during the Trump presidency.

That the ACMA should presume to judge what reporters should or should not make the topic of their reports is to exceed its authority, and to take it well beyond its competence. It is not as though the role of social media could have been summed up in a sentence or two: it is a subject in its own right.

But as the ACMA itself concludes, the programs did demonstrate that some Fox News presenters, at least, did their utmost to reinforce the doubts that President Trump and his allies were raising about the validity of the 2020 presidential election. The fact that other social media platforms were involved in fomenting the actual events of January 6th is not a 'relevant fact': it is simply a distraction from the focus that *Four Corners* had chosen – and which, given the vital role played by Fox News in the United States, and by the Murdoch media in Australia, it has every right to choose.

In its investigation, the ACMA characterises the complaint [from the unnamed complainant] thus (page 3):

*the complainant observed that social media platforms, **not Fox**, played a critical role in encouraging rioters. This should have been included in the Episodes.*

It is true that social media platforms played a role in encouraging rioters on the day. It is NOT true that Fox News played no role in fomenting the anger that led to the riot. The ACMA does not adequately make this distinction, but again accepts the complainant's false characterisation. In so doing, the ACMA materially misleads its readers by omitting relevant information.

Example 4: The claim that *Four Corners* breached the ABC's Code of Practice by inadequately introducing itself to Jeanine Pirro.

To any experienced television journalist, this claim by the ACMA is not so much misleading, as simply ridiculous.

The 'doorstepping' of subjects who have previously refused to be interviewed in a program – that is to say, approaching them in the street or on their front doorstep to put questions to them, in the expectation that they will refuse to answer – is one of the oldest devices of television journalism.

Here we are dealing with an experienced, veteran television presenter. Ms Pirro knew perfectly well what was going on: that Ms Ferguson was a reporter for an Australian television program. And it was clear from the questions what the topic was likely to be. In any case, Ms Pirro was experienced enough to smile and ignore Ms Ferguson.

Yet in the ACMA's judgment, if she intended to use this footage, and regardless of Ms Pirro's response, Sarah Ferguson should first have said: "Excuse me, Ms Pirro, I am a reporter from the Australian Broadcasting Corporation's weekly current affairs program *Four Corners*, and we are conducting an investigation into the extent that Fox News in general, and you in particular, fed the view in some sections of the American public that the 2020 Presidential election was "stolen" and that misprogrammed voting machines were one of the devices used to do so. Do you still maintain that claim?"

That judgment is simply laughable. And it is the ACMA that will be laughed at. As a consequence, it cannot be taken seriously as an arbiter of journalistic behaviour.

We really have nothing further to say on that topic.

Conclusion

We conclude by saying that it is regrettable that we should find it necessary to write to you in this vein. But you say in the ACMA's media release:

"Current affairs programs such as *Four Corners* are not precluded from presenting a particular perspective on an issue or reaching a particular conclusion. But that needs to be balanced against requirements to gather and present information with due impartiality.

“The ACMA considers that ABC could have taken greater care in striking that balance in this program to avoid perceptions of partiality.”

To which we would respond:

“Regulators such as the ACMA are not precluded from making judgments that are critical of even the most reputable practitioners of investigative journalism. But that needs to be balanced against requirements to understand normal journalistic conventions and to respect legitimate editorial decisions.

“ABC Alumni consider that the ACMA could have taken greater care in striking that balance in this investigation, to avoid perceptions of partiality towards a powerful complainant, or (perhaps) of journalistic cluelessness.”

Regards,

A handwritten signature in dark ink, appearing to read 'Jonathan Holmes', with a stylized flourish at the end.

Jonathan Holmes
Chair
ABC Alumni Limited

abcalumniaustralia@gmail.com